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352-392—69——1

In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 1351

HARRY S. STONEHILL AND ROBERT P. BROOKS,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the district court (Pet. 31a–42a) is reported at 274 F. Supp. 420, and the opinion of the court of appeals (Pet. 1a–30a) is reported at 405 F. 2d 738.

JURISDICTION

The judgment of the court of appeals was entered on December 9, 1968 (Pet. 1a–2a), and a petition for rehearing was denied on February 4, 1969 (Pet. 2). The petition for a writ of certiorari was filed on May 2, 1969, invoking this Court's jurisdiction under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether copies of financial records must be excluded from evidence in a civil tax proceeding in a federal court on the ground that the original documents were obtained in a foreign country by foreign officials in violation of foreign law and under circumstances that would have violated the Fourth Amendment if the searches had been conducted by United States officials.

2. Whether, on the facts of this case, United States officials instigated or participated in the foreign searches to such an extent as to make them, in effect, searches subject to the Fourth Amendment and the exclusionary rule.

STATEMENT

The United States instituted this action against Harry S. Stonehill and Robert P. Brooks, petitioners before this Court, to foreclose tax liens and collect federal income tax assessments for $13,613,721 and $11,182,966, respectively, for the years 1958 through 1961 (Pet. 1a, 36a). During the tax years in question, the taxpayers resided in the Philippines where the tax investigation leading up to the assessments involved had its inception (Pet. 3a). In the initial stages of the tax investigation, a substantial amount of evidence, consisting of business records of the taxpayers and of various corporations of which they were officers and stockholders, was obtained from the Philippine National Bureau of Investigation.[1] The NBI had secured these documents in March 1962 by raids upon the

[1] Hereinafter, NBI.

offices of the taxpayers and at least 16 Philippine corporations (Pet. 46a). In a suit for declaratory and injunctive relief, the Supreme Court of the Philippines has ruled that the raids on the taxpayers' residences were illegal because the applications for search warrants and the warrants themselves lacked the requisite specificity under Philippine law (which is adopted in this regard from American law); the Philippine court held, however, that the taxpayers had no standing to question the legality of the raids upon the various corporations (Pet. 45a–60a).

In the present lien foreclosure proceeding, the taxpayers moved the district court to suppress the evidence obtained from the NBI on the ground that United States officials had improperly participated in the raids in violation of their constitutional rights under the Fourth Amendment. (Pet. 2a, 3a.) This issue was severed and made the subject of a hearing lasting from June 12 to June 23, 1967 (Tr. 5, 1117).[2] The district court found that no United States officials had either instigated or participated in the raids by the Philippine officials. Concluding that the Fourth Amendment and the exclusionary rule employed to enforce it do not apply to searches and seizures conducted solely by foreign officials, the court denied the motion. (Pet. 42a.) On an interlocutory appeal pursuant to 28 U.S.C. 1292(b) (Pet. 1a–2a, 43a), the court of appeals affirmed, one judge dissenting (Pet. 1a–30a).

[2] "Tr." references are to the Trial Transcript.

ARGUMENT

This proceeding raises two related questions. As to the first, the court below correctly ruled that the policies underlying the exclusionary rule for evidence unconstitutionally obtained by federal or state officers are not pertinent to the admissibility of relevant and probative evidence secured abroad by foreign officials for their own purposes. This decision is in accord with the conclusion reached by the only other circuit that has considered the issue (the Fifth Circuit, speaking through Judge Friendly) and follows an earlier decision of the court below—both of which cases this Court declined to review; since there is no indication the question is a frequently recurring one, further review is not warranted. Nor is there any reason for further review of the other question posed by this case, whether the two courts below properly found on this record that the activities of United States revenue agents did not constitute improper instigation of or participation in the searches by foreign officials.

1. The exclusionary rule, designed to enforce the Fourth Amendment by removing any incentive for an unreasonable search, does not extend to evidence secured by foreign authorities in a foreign country, where the evidence is untainted by misconduct by American officials.

In *Weeks* v. *United States,* 232 U.S. 383, the Court held that evidence illegally seized by federal officers in violation of the Fourth Amendment could not be used in a federal criminal prosecution. The Court noted, however, that evidence seized by *state* agents acting on their own account could be utilized

in a federal criminal prosecution because the Fourth Amendment was not directed to the misconduct of the state officers. 232 U.S. at 398; see, also, *Elkins* v. *United States,* 364 U.S. 206, 210. Evidence obtained in an illegal state raid would be excluded from a federal criminal prosecution only if federal officials substantially participated in the search and seizure, *Byars* v. *United States,* 273 U.S. 28; *Lustig* v. *United States,* 338 U.S. 74, or if the state officials conducted the raid not for their own purposes but on behalf of federal agents pursuant to a tacit agreement or understanding, *Gambino* v. *United States,* 275 U.S. 310. For similar reasons, evidence turned over to the federal government by a private citizen who had obtained it illegally has long been held admissible in a federal criminal prosecution because the Fourth Amendment does not apply to such misconduct. *Burdeau* v. *McDowell,* 256 U.S. 465.

Although this Court subsequently extended the application of the exclusionary rule—in *Elkins, supra,* to evidence received by federal officials on a "silver platter" from state agents, and in *Mapp* v. *Ohio,* 367 U.S. 643, to evidence seized by state agents and used in state prosecutions—the underlying premise remained as in *Weeks.* In *Elkins,* the Court said that the exclusionary "rule is calculated to prevent, not to repair. Its purpose is to deter—to compel respect for the constitutional guaranty in the only effectively available way—by removing the incentive to disregard it" (364 U.S. at 217). See, also, *Mapp, supra,* 367 U.S. at 648–650, 655–656. And in denying *Mapp* retroactive application the Court once more noted

that the "prime purpose" for the exclusionary rule is the enforcement of the dictates of the Fourth Amendment through "the only effective deterrent to lawless police action." *Linkletter* v. *Walker,* 381 U.S. 618, 636.

Neither the terms nor the rationale of either *Mapp* or *Elkins* supports any extension of the exclusionary rule to searches and seizures not conducted by federal or state authorities. Thus, we believe, the Fourth Amendment and its sanction still remain inapplicable to seizures by private persons as in *Burdeau* v. *McDowell, supra.* In the instant case, the federal officials received the evidence in question from Philippine officials. Since the Fourth Amendment has no possible application to the actions of officials of foreign governments acting on their own account in their own territory, the Philippine officials in question occupied essentially the same status as did the private citizen in *Burdeau* v. *McDowell.* And in addition, there is not the slightest reason to believe that *foreign* police officers have any incentive to conduct their official investigations according to standards that will permit the use of their fruits in American courts. Thus, the basic deterrent purpose of the exclusionary rule would not be served by granting the relief sought in this case.[3]

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[3] The additional factor involved in *Elkins*—the "imperative of judicial integrity" (364 U.S. at 222)—rested on the principle that the federal courts should not "be accomplices in the willful disobedience of a Constitution they are sworn to uphold" (364 U.S. at 223). That principle, however, is plainly not implicated in the case of a search by foreign officials not subject to our Constitution.

For these reasons, the three appellate decisions that have considered the question have concurred in holding that, absent direct involvement or participation by American agents, any relevant and probative evidence obtained by foreign officials in a foreign country is admissible, whether or not seized lawfully under foreign or American law. See, in addition to the decision below, *Brulay* v. *United States,* 383 F. 2d 345 (C.A. 9), certiorari denied, 389 U.S. 986; and *Birdsell* v. *United States,* 346 F. 2d 775 (C.A. 5), certiorari denied, 382 U.S. 963.[4] As Judge Friendly, sitting by designation, explained for the Fifth Circuit in *Birdsell,* the principle that the United States is bound by the Constitution wherever it acts is simply not relevant "to an action by a foreign sovereign in its own territory in enforcing its own laws, even though American officials were present and cooperated to some degree" (346 F. 2d at 782). And exclusion of such evidence would be required under the broader requirement that federal justice be administered fairly only "where federal officials had induced foreign police to engage in conduct that shocked the conscience [of] a federal court"; in such circumstances a federal court "might * * * refuse to allow the prosecution to enjoy the fruits of such action" (346 F. 2d at 782, n. 10).

In considering what might be the non-Fourth Amendment requirements for the fair administration

[4] The *Brulay* and *Birdsell* cases involved the use in a federal criminal prosecution of evidence obtained from Mexican officials who in turn obtained the evidence in searches and seizures which would have been illegal under the Fourth Amendment if conducted by federal officials.

of justice in the federal courts, it is important to recognize that this is not a "quasi-criminal" case, as petitioners contend (Pet. 34), but a civil case. *Helvering* v. *Mitchell,* 303 U.S. 391, 398–405. It is yet an open question whether the Fourth Amendment's exclusionary rule applies to civil trials, see *Cleary* v. *Bolger,* 371 U.S. 392, 403, 413 (concurring and dissenting opinions), other than forfeiture proceedings which require proof of a criminal offense and which clearly involve penalties for criminal offenses. See *One 1958 Plymouth Sedan* v. *Pennsylvania,* 380 U.S. 693, 700–702; *Boyd* v. *United States,* 116 U.S. 616, 638. Thus, even if there were some reason to exclude the evidence involved in this case from a criminal proceeding, it by no means follows that the tax collection authorities should be prevented from making any use of it. The effect of such a ruling would simply be to penalize the United States—and in effect the taxpaying public—by denying the opportunity to collect the nearly $25,000,000 in back taxes assessed against petitioners, merely because officials of another nation engaged in an unreasonable search that uncovered documents relevant to petitioners tax liability.[5]

2. The other question involved in this case is the factual one whether the activities of American revenue agents in the Philippines constituted such instigation of or participation in the raids that they

[5] As we noted *supra,* p. 3, the Philippine Supreme Court held petitioners without standing to challenge many of the seizures. Their standing to seek suppression of the corporate documents was not passed on below (see Pet. 2a, n. 2).

became also an American enterprise for purposes of the Fourth Amendment and the exclusionary rule.

Both courts below recognized that if federal agents were substantially involved in the conduct of the searches and seizures the Fourth Amendment would be applicable (Pet. 8a–9a, 39a). See *Byars* v. *United States,* 273 U.S. 28; *Lustig* v. *United States,* 338 U.S. 74. This factual issue of participation was severed from the other issues and tried separately at a lengthy hearing. On the voluminous record compiled at the hearing, both the district court (Pet. 38a–39a, 42a) and the court of appeals (Pet. 7a, 14a–15a) found that federal officials had neither instigated nor participated in the searches and seizures. Petitioners' Statement of the Case (Pet. 5–15) is the result of a painstaking gleaning of the record for a version of the facts which is most favorable to their cause, but it is contrary to the findings below.

This Court has long taken the view that it will not and should not review the correctness of the concurrent findings of fact of two lower courts, in the absence of a very obvious and exceptional showing of error. See, *e.g., Berenyi* v. *District Director, Immigration and Naturalization Service,* 385 U.S. 630, 635–636; *Corn Products Co.* v. *Commissioner,* 350 U.S. 46, 50–51. That sound principle applies to this case and militates against further review. But because petitioners have isolated various passages of testimony in order to suggest that the findings below were erroneous, we consider it appropriate to set forth in some detail the evidence showing that the findings of the lower courts are amply supported.

The petitioner-taxpayers, Harry S. Stonehill and Robert P. Brooks, are American citizens who engaged in business together in the Philippines after World War II and amassed a complex of at least 16 corporations (Pet. 2a, 46a). In August of 1960, Stonehill's 1958 federal income tax return was sent for audit to Robert Chandler, who was attached to the United States Embassy in Manila, Republic of the Philippines, as the Internal Revenue Service Representative for the Far East (Tr. 70–71, 81; Pet. 3a).[6] Chandler initially advised his office that this audit could not be undertaken until additional agents were assigned to his office (Tr. 81–85; Deft. Ex. A; Pet. 3a). Thereafter, nothing was done with respect to any audit of the taxpayers until December of 1961, when Menhart Spielman, a former vice-president of United States Tobacco Corporation, a company owned and controlled by the taxpayers, contacted Chandler and Robert Hawley, a Federal Bureau of Investigation agent attached to the American Embassy in Manila (Pltf. Ex. 11, p. 1; Tr. 96–97, 70–71; Pet. 3a).

Spielman alleged that the taxpayers were involved in various illegal activities and turned over approximately 100 documents to Hawley and Chandler (Tr. 110, 1203; Pltf. Ex. 11, pp. 3–4; Pet. 3a). Chandler

[6] Chandler's duties included liaison work with various foreign government agencies in his territory as well as auditing returns and collecting taxes from American taxpayers residing in his territory (Tr. 76–77, 439; Pet. 3a). These duties included liaison work with the NBI, through which he met and became friendly with José Lukban, Acting Director of the NBI (Tr. 71–72). Chandler did not have the authority to initiate a fraud investigation; only a Special Agent for the Internal Revenue Service could initiate such an investigation (Tr. 439).

concluded that Spielman's information indicated possible tax liabilities, and on December 22, 1961, he so advised his headquarters in Washington, D.C. (Pltf. Ex. 11; Pet. 3a). He also advised Washington, however, that any tax investigation was beyond his office's capabilities and recommended that a team of agents be assigned to the matter (Pltf. Ex. 11; Pet. 3a).

In the course of continued meetings, Chandler did nothing but collect information from Spielman (Tr. 112–128). He continued to ask his headquarters in Washington for help (Tr. 129–130; Pet. 3a; Deft. Exs. E, F), and even stated that it would be better not to undertake this tax investigation than to attempt it with an inadequate staff (Deft. Ex. E).[7]

As of February 13, 1962, it still had not been decided whether or not to assign personnel to conduct this tax audit (Deft. Ex. F). From December 18, 1961, the date on which Mr. Chandler met the informer Spielman, until March 3, 1962, the date of the raids by the Philippine authorities, Mr. Chandler was not assigned, nor did he assign, the investigation of the taxpayers' liabilities (Tr. 468–469, 1179).

At the first meetings between Chandler and Spielman, Spielman expressed a fear for his personal

[7] The taxpayers contend that the memorandum of January 10, 1962, from Chandler to his office (Pet. 74a–76a) conclusively shows that the Philippine searches and seizures were the result of an official United States government decision and policy. A reading of this document merely shows that Chandler advised his office of the United States Embassy's opinion of the unfortunate effects petitioners' activities had had on Philippine affairs.

safety (Tr. 141, 472). FBI agent Hawley tried for some time to persuade Spielman to turn over his information to Colonel Lukban, Director of the Philippine NBI, since the information concerned violations of Philippine laws and since the Philippine authorities could give Spielman the protection he sought (Tr. 1101–1102, 1205, 1210–1213). Finally, Spielman was persuaded to relate his information to Colonel Lukban on January 27, 1962 (Tr. 465, 1203–1205, 1210–1213; Pet. 4a).

This, however, was not the beginning of the Philippine law enforcement authorities' concern about petitioners' activities. Between Christmas of 1961 and the first week of January of 1962, Colonel Lukban informed Chandler he was aware that Chandler had some information about Stonehill, and he requested it; Chandler, however, refused to divulge any information because of the informant's desire for anonymity (Tr. 463–465, 1101, 1204). José Diokno, who was the Philippine Secretary of Justice at the time of the raids, testified in a deposition [8] that the raids in question were made *solely* for the purpose of furthering a Philippine investigation which had begun years earlier, long before Chandler first met Spielman (Pltf. Ex. 12, pp. 14, 38, 52, 145; Pet. 4a).[9]

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[8] Petitioners stipulated that this 182-page deposition could be received in evidence at the hearing if its use were limited to this case (Tr. 1200–1201).

[9] Petitioners contend (Pet. 9) that prior to Spielman's meeting with Colonel Lukban, there was no investigation by Philippine authorities concerning them. They rely on a statement of Chandler's (Tr. 143) that when Colonel Lukban heard Spielman's story, Lukban stated that "* * * he would investigate it." As used in this sentence, however, "it" refers to Spielman's

After Spielman's first introduction to Colonel Lukban of the NBI, they met a number of times in February 1962 (Tr. 146). At Spielman's request these meetings took place at Chandler's house (Tr. 148) because Spielman refused to be seen entering the NBI headquarters and Colonel Lukban felt that meetings at the United States Embassy were not appropriate (Tr. 139–141, 471–472). Chandler consented to this use of his house (Tr. 472) because of his friendship with Colonel Lukban (Tr. 72). Secretary Diokno further explained that Colonel Lukban was trying to keep Spielman's movements and whereabouts secret (Pltf. Ex. 12, p. 22).[10] In addition, Chandler did not even attend all of the meetings held at his house (Tr. 997–998) and he described those meetings at which he was present as basically between Spielman and the NBI (Tr. 149, 998).[11]

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story not to the taxpayers, as petitioners imply in their brief by truncating the quote to read: "he would investigate * * *" Petitioner's statement in this matter completely ignores the testimony of Secretary Diokno. Petitioners also overlook the fact that Colonel Lukban took the initiative in contacting Chandler to inquire what information he had about Stonehill, before Lukban even met Spielman (Tr. 463–465, 1101, 1204).

[10] Spielman had already received one severe beating and feared for his life (Pltf. Ex. 11; p. 3).

[11] There is no foundation for petitioners' contentions that at these meetings Chandler advised the NBI personnel as to the type of financial records in which he had an interest (Pet. 10). For these contentions they cite the testimony of Chandler (Tr. 316) and Major Del Rosario, an aide to Secretary Diokno (Tr. 847, 848). Chandler admitted describing to the NBI the various financial documents that would interest him (Tr. 316), but he clearly and unequivocally testified that he did this *after* the raids (Tr. 321–327). The testimony of Major Del Rosario on behalf of the taxpayers was thoroughly impeached on

Also at the beginning of February of 1962, Secretary Diokno met with Chandler and Hawley to ascertain what interest the United States had in the petitioners and their activities (Tr. 979).[12] Shortly thereafter, Secretary Diokno requested Hawley to help arrange a meeting with the then Attorney General of the United States, Robert F. Kennedy, who

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cross-examination, when he admitted that when he was introduced to Chandler, he did not know what the Stonehill case was about or what his duties, if any, were to be with respect to liaison with Chandler (Tr. 887); he first placed his initial meeting with Chandler in March of 1962 (at most two days prior to the March 3d raids) (Tr. 887). Later, he testified he met Chandler several times prior to the raids (Tr. 845, 846, 891), but these "meetings" occurred when Chandler brought Spielman to see Secretary Diokno, at Spielman's or Diokno's request, not at Chandler's house, but at the Philippine Department of Justice (Tr. 891–893), and while both Chandler and Del Rosario were waiting in an outer office for Spielman and Secretary Diokno to finish talking in an inner office (Tr. 913–914). Finally, Del Rosario admitted he never heard anyone promise to give any seized documents to Chandler (Tr. 922–924). He also admitted that his and the Philippine authorities' main interest was in investigating Philippine crimes (Tr. 901), and that, while Secretary Diokno may have told him as late as March 2d about the raids on March 3d (Tr. 894), he did not see Chandler on March 2 (Tr. 848–851).

Secretary Diokno testified that he first advised Del Rosario of the Stonehill investigation on March 2 (the day before the raid) and gave him no other information at that time (Pltf. Ex. 12, pp. 37–43, 115). Diokno testified that he did not ask Del Rosario to help in the investigation because of the need for secrecy and because Del Rosario possibly had some social contacts with petitioners (Pltf. Ex. 12, pp. 97–100).

[12] Diokno testified that this inquiry was made because the two persons being investigated were American citizens and he wanted to be sure that the United States was not going to intervene to stop the investigation after he had committed himself (Pltf. Ex. 12, pp. 155–156).

was making a tour of the Far East; in response Chandler gave Diokno the name of the Hong Kong police official in charge of security for Attorney General Kennedy's party in Hong Kong (Pltf. Ex. 12, pp. 60–63). Secretary Diokno flew to Hong Kong and saw a Mr. Seigenthaler, one of the Attorney General's aides, on February 11, 1962 (Pltf. Ex. 12, pp. 24–25; Deft. Ex. AZ). At this meeting, Secretary Diokno requested American help in investigating petitioners, specifically, that the United States furnish tobacco experts for investigation of the activities of the petitioners' Philippine tobacco companies (Pltf. Ex. 12, pp. 25–26, 61–62). No one at that meeting asked Secretary Diokno to assist the United States in any investigation (Pltf. Ex. 12, pp. 25–26, 44), and Chandler at no time made such a request (Pltf. Ex. 12, p. 44). Further, Secretary Diokno admitted that the help he sought from the United States was never provided (Pltf. Ex. 12, pp. 26, 169).

Around the time of this Hong Kong trip, Secretary Diokno decided that petitioners should be arrested and their companies' business premises raided in connection with the NBI's investigation (Pltf. Ex. 12, pp. 26–34). When Chandler learned of this decision, he requested that no such action be taken until personnel from the Internal Revenue Service had an opportunity to evaluate the tax problems (Tr. 986). This request was disregarded, however, and the raids were conducted on March 3, 1962, prior to the arrival five days later of Special Agent Sterling Powers, who was to be in charge of the United States tax investigation

(Tr. 468–469, 1179).[13] After this decision by Secretary Diokno, and in advance of the raids, Chandler did endeavor to secure from Colonel Lukban permission to see records seized in the raids (Tr. 989).

On the night of March 2, 1962, Chandler was contacted by an aide of Colonel Lukban who requested that he visit Lukban at his home (Tr. 1006). Upon arriving, Chandler found a large number of NBI personnel there, speaking the Tagalog language (Tr. 1006–1007). The NBI agents were standing around drinking soft drinks (Tr. 1007), and the gathering appeared social in nature (Tr. 305–306). At this time, a Mr. Nocon started (or resumed) typing (Tr. 1007) and Colonel Lukban showed or read to Chandler a document that he described as a warrant, soliciting Chandler's comments (Tr. 306, 1007). Chandler testified that he did not know anything about warrants, did not even know what kind of warrant it was, never having seen any before, and quickly replied that it looked all right to him (Tr. 1007, 306–313).[14]

Chandler stated that he did not compose or draft the warrants or the applications for the warrants (Tr.

[13] In his direct examination by petitioners' counsel Del Rosario testified that the raids were postponed to March 3d because federal agents who were to help Chandler had not arrived from the United States (Tr. 843–844); on cross-examination, however, he admitted that he had previously testified that the raids had been postponed because tobacco experts requested by Secretary Diokno had not been furnished by the United States (Tr. 898–900).

[14] At the hearing, Chandler was shown one of the search warrants and the application therefor which were used in the raids, but he stated that this was not the type of thing shown to him at Colonel Lukban's on March 2d (Tr. 1007–1008, 1010–

315–316), and that they must have been prepared even before he arrived (Tr. 319). He did not know how many warrants there were or how many or what premises were going to be raided (Tr. 1010). Thus, his casual remark that the papers shown to him looked all right cannot be elevated to meaningful participation in the planning for the raids.

Although Chandler, while he was at Lukban's house, overheard some of the NBI personnel make references to the forthcoming raids, he did not answer any questions of the NBI team leaders concerning the raids (Tr. 308–309); he neither gave advice nor made any requests to Colonel Lukban concerning the raids (Tr. 1009).[15] Chandler was present at Colonel Luk-

1011). Chandler's comment on the document simply identified as a warrant can only be taken for what it was, a passing remark on something about which Chandler had no knowledge and did not hold himself out to have, since he was not a special agent with the training or responsibility for criminal investigations.

[15] Chandler admitted that, out of curiosity, he asked Mr. Nocon if the room rented by Karl Beck at the Army-Navy Club was included in the places to be raided; when Mr. Nocon said "No", Chandler said he thought any raids should include those premises (Tr. 1009–1010, 317–318). Chandler stated that he made this comment because of what the informer Spielman had told the NBI and him (Tr. 319). This was not an order or directive or even addressed to Secretary Diokno or Colonel Lukban, the men who decided on the raids and planned them (Pltf. Ex. 12, p. 52; Tr. 902). It was but a reminder to a lower echelon NBI employee of what the informer Spielman had already told them. This remark did not even involve premises in the names of the taxpayers but rather concerned a room rented in the Army-Navy Club under the name of Karl Beck (Tr. 695), an executive of the Industrial Business Management Corporation (Tr. 666), which was one of the Philippine corporations being investigated by the Philippine authorities for violations

ban's house on the night of March 2, 1962, for not more than 30 minutes (Tr. 1008). Chandler emphatically denied that he dictated or gave any written instructions to any NBI personnel (Tr. 328–330) or otherwise participated in the planning of the raids (Tr. 320). He swore that the only aid he ever gave the Philippine officials at any time was the relaying of information from Spielman to them (Tr. 320).[16]

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of Philippine law (Pet. 46a). There is nothing to show that this reminder by Chandler had any specific connection to any United States investigation. Hence, this incident cannot be determined, at this juncture, to negate the findings of the courts below that Chandler had not been involved in planning the raids.

[16] Petitioners contend that Chandler prepared a location map (Deft. Ex. J; Pet. 78a) and detailed written instructions (Deft. Ex. I; Pet. 77a) for the conduct of the raid (Pet. 12). Defendants' Exhibit J is a diagram listed as the premises of the Goodrich Building, containing offices of the Evening News; Defendants' Exhibit I is described as detailed written instructions but actually it consists of a collection of notes arranged in numerical order, many of which are simply "no comment". Chandler freely admitted that most of the handwriting on these two exhibits was his (Tr. 349, 360–361), but that some of the handwriting on Defendants' Exhibit J appeared to be that of others and that the diagram part was not his because he had never been to the buildings drawn thereon (Tr. 360–363, 368–369, 1047). He stated that he did not remember drafting these exhibits (Tr. 351, 363, 367, 370, 373, 1048) but that he did make notes and drawings when interviewing Spielman and drafted such things at Spielman's request for the purpose of reducing Spielman's story to paper (Tr. 331, 351, 353, 356–357, 366, 368, 373, 1048–1049). Also, he stated he helped Spielman reduce his story to paper because Spielman was often misunderstood by the NBI officials (Tr. 366, 1049), as Spielman, who lived in Czechoslovakia until an adult (Pltf. Ex. 11, p. 1), and the NBI officials who spoke Tagalog among themselves (Tr. 1006–1007), spoke English with different accents (Tr. 460, 373). Chandler stated that the language in these two exhibits was Spielman's

The actual raids were simultaneously commenced by 200 NBI agents at 1:00 p.m., Saturday, March 3, 1962 (Tr. 396, 864, 906, 909), at which time petitioners

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language (Tr. 353, 356, 358), that all the information on these exhibits came from Spielman, and that he never visited or made any personal investigation of the premises described (Tr. 372–373, 1047). Further, Chandler explained that he did not give these or like papers to anyone other than Spielman (Tr. 351, 356–357, 358, 359, 1048–1049) and that he did not remember giving the exhibits to Colonel Lukban, the NBI, or Secretary Diokno (Tr. 352, 357, 1048–1049). Chandler denied that he wrote anything at all when he visited Colonel Lukban's house the night before the raids (Tr. 328–330, 1041, 1077). There is absolutely no indication, in the record, other than the hearsay suggestion made by counsel for the petitioners (Tr. 349–357), that these two exhibits were ever in the possession of the NBI.

By no stretch of the imagination can these two exhibits be characterized as instructions or directions by Chandler to the NBI or to anyone else. The only logical explanation for Defendants' Exhibit I is that it contains responses to answers from a person being interviewed. This is clearly shown by the fact that this exhibit contains 20 numbered comments apparently tied into some picture folder. Of these 20 numbered comments, 8 of them (to-wit, 1, 3, 5, 6, 17, 18, 19 and 20) contain the notation "no comment" and comments numbered 11, 12 and 13 merely state "Goodrich Bldg." These would be strange instructions to give any NBI personnel making raids. Also, the only items mentioned in these two exhibits which could be deemed to refer to evidence to be seized are references to "stamps," i.e., Philippine revenue stamps to be placed on cigarette packages made and sold by United States Tobacco Corporation, and "rolls of cigarette paper" described as "newsprint," which also pertain to the manufacture of cigarettes. (Deft. Exs. I, J.) These latter notations do not relate to any evidence germane to an American investigation, but are only pertinent to the NBI investigation into counterfeit Philippine tobacco stamps, tobacco paper smuggled into the Philippines, and cigarettes on which the Philippine excise tax was not paid (Pltf. Ex. 12, pp. 61–62; Deft. Ex. AZ).

were arrested (Tr. 908). Secretary of Justice Diokno testified that he made the decision to conduct the raids and that the NBI made all the preparations (Pltf. Ex. 12, pp. 27–40, 46–49). This testimony was corroborated by the petitioners' own witness, Major Del Rosario, who had been Secretary Diokno's aide (Tr. 901–902). Further, Secretary Diokno testified that he personally cleared this investigation with the President of the Philippines who granted permission to proceed (Pltf. Ex. 12, pp. 45–46, 93–94). Secretary Diokno also testified that these raids were not conducted for any purposes of the United States government but solely to uncover violations of Philippine law (Pltf. Ex. 12, pp. 52–53), and that he received no requests from the United States government, or from Mr. Chandler in particular, with respect to the raids (Pltf. Ex. 12, pp. 43–44).

At 1:00 p.m. on March 3, 1962, Chandler, together with two employes from his office, William Ragland [17] and a Mr. Reynolds, went to a parking lot across the street from NBI headquarters to await the conclusion of the raids and to see if they could obtain from the NBI any records which were seized (Tr. 1012–1013, 1136). They remained there or at the NBI arson squad building until approximately 10:00 p.m. without any communication with the NBI, although Chandler tried to telephone Colonel Lukban several times (Tr. 1017–1018). At approximately five o'clock

[17] Ragland was an Internal Revenue Agent who had been sent to the Philippines to work under and assist Special Agent Sterling Powers, who was to handle this tax investigation for the United States (Tr. 1183–1184). Ragland arrived in the Philippines on February 26, 1962 (Tr. 1133); Powers did not arrive until March 8, 1962 (Tr. 1179).

that afternoon, Chandler, Ragland and Reynolds had read in the evening newspaper that the taxpayers had been arrested and that various businesses with which they had been associated had been raided (Tr. 1015–1016). Finally, at about 10:00 p.m., Chandler talked to Colonel Lukban on the telephone and Colonel Lukban requested that he come over to his office (Tr. 1017–1018). The three Americans went to Colonel Lukban's office where they saw a large volume of records which, they were told, came from the raided premises (Tr. 401, 1018–1019, 1139–1140). Colonel Lukban indicated that the raids had been completed, although the NBI remained in possession of many of the raided premises (Tr. 400–401). Chandler, at this time, requested permission to copy the seized documents, but this request was refused and he was told that the documents would not be made available until after they had been examined, catalogued, and inventoried by the NBI (Tr. 1019, 1143, 425–426).

During the half-hour when Chandler, Ragland and Reynolds were present in Colonel Lukban's office, an NBI agent entered and told Colonel Lukban that he had seized a large volume of corporate records (Tr. 1142, 1144, 1019–1020) at a warehouse of the United States Tobacco Corporation but that there were too many to bring back to the NBI office; he also requested the help of an accountant to identify what records were significant (Tr. 1142–1143, 1019–1021). Colonel Lukban then asked Chandler to go to the warehouse and help the NBI agents there, and in order to retain the cooperation of the host government Chandler agreed. At the warehouse, the three Ameri-

cans found a large quantity of old corporate records in a storage area (Tr. 1019–1022, 1142–1147);[18] after pointing out an old general ledger of the corporation and some supporting books as being the more significant records for accounting purposes, they left (Tr. 1019–1022, 1146–1148). They made no detailed examination of these records; they took no records with them; they do not know what the Philippine authorities did with them, and they have never seen these old records since (Tr. 1147–1149). Further, they were at this warehouse for only one-half hour, beginning at approximately 11:00 p.m., on March 3, 1962 (Tr. 1024, 1149).

When Chandler left the warehouse, he drove to the main office of the United States Tobacco Company several blocks away. Leaving Ragland and Reynolds in his car, he approached the NBI agent in charge and asked if he had found the record storage room of which Spielman had advised both Chandler and the NBI (Tr. 1150, 1024–1025). Apparently unaware of this information, the NBI agent asked Chandler to point out that area (Tr. 1025). Chandler stepped into the office building, pointed out the general location of the record storage room and left (Tr. 1025). Chandler did not enter the storage area or examine

[18] This warehouse and the records it contained remained in the custody of the NBI for two years (Tr. 339, 404, 610–611). Further, when Chandler arrived at the warehouse, the records were no longer in their original sealed boxes but were in great disarray on the floor (Tr. 1022, 1146) and obviously had been examined by the NBI agents (Tr. 657). The taxpayers' own witness, Mrs. Zubiri, admitted that the NBI agents had broken the cartons containing these records and examined them prior to Chandler's arrival (Tr. 657–658).

any records there (Tr. 1025–1026); he was on the corporate premises for approximately five minutes (Tr. 1026).[19] Chandler, Ragland and Reynolds then went home (Tr. 1034–1035). Subsequently, the NBI team did enter the record storage area and found there stock inventory records of the United States Tobacco Corporation (Tr. 614–619).

On Sunday, March 4, 1962, Chandler again contacted Colonel Lukban and requested that he make the seized records available but again Colonel Lukban refused, saying that Chandler would have to wait until the NBI had gone over the records and inventoried them (Tr. 425–426). On Monday, March 5, 1962, Ragland and Reynolds went to the NBI headquarters and some of the seized records were made available to them for the first time; they were not, however, given free access to all of the records seized (Tr. 1153). On Thursday, March 8, 1962, Special Agent Sterling Powers, who was sent from the United States to conduct the tax investigation, arrived in Manila (Tr. 1179), and Powers and Ragland continued to inspect and copy some of the seized documents for a number of months (Tr. 1183).

Thereafter, the Philippine investigation culminated in petitioners' deportation from the Philippines.

On this record, the courts below were justified in concluding that the incidental connection of American officials negatived petitioners' contention that the

[19] Thus, these visits to the warehouse and main office of the United States Tobacco Corporation occurred at least eight hours after these premises had been seized by the NBI and also after Colonel Lukban had advised Chandler that the raids had been accomplished.

United States government was implicated in the raids planned and executed by Philippine agents, in the Philippines, to secure evidence of violations of Philippine laws. As reliably found by the courts below, the facts of this case therefore do not justify forbidding the use of copies of the seized documents in this civil tax-lien foreclosure suit.

CONCLUSION

The petition for a writ of certiorari should therefore be denied.

Respectfully submitted.

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